



November 16, 2001

Mr. J. Michael Criswell  
County Attorney  
Swisher County  
Courthouse  
Tulia, Texas 79088

OR2001-5312

Dear Mr. Criswell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155004.

The Swisher County Sheriff received a request for seven categories of information relating to a named former police officer and employee of the sheriff's department. You advise that information available and responsive to the request has been redacted and released. However, you claim that the requested information regarding documents identifying the former officer as a suspect or accused of any criminal act is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101

of the Government Code. Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d at 685; Open Records Decision No. 611 at 1 (1992).

Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In *Reporters Committee*, the Supreme Court balanced the substantial privacy interest in avoiding disclosure of a criminal history compilation against the public interest in its release. *Id.* at 762. The court opined that the public interest in disclosure that would warrant an invasion of personal privacy is a request for official information to "open agency action to the light of public scrutiny." *Id.* at 772. Accordingly, the court held "as a categorical matter that a third party's request for law enforcement records or information about a *private* citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no 'official information' about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is 'unwarranted.'" *Id.* at 780 (emphasis added).

Here, the request is for documents identifying a named former police officer and public employee as a suspect or accused of any criminal act. After reviewing the information you seek to withhold, we conclude that, in this instance, although the officer has a privacy interest in the information, there is a legitimate public interest in the submitted information that outweighs the privacy interest. Thus, in this particular case, you may not withhold the submitted information under section 552.101 or 552.102 based on either common-law privacy or *Reporters Committee*.

However, any information tending to identify a sexual assault victim must be withheld pursuant to common law privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668; Open Records Decision No. 393 (1983). As the submitted incident report pertains to an alleged sexual assault, we have marked the types of identifying information that you must withhold under section 552.101 to protect the privacy of the alleged victim.

Furthermore, section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code.<sup>1</sup> Finally, section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have also marked the information

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<sup>1</sup> Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

that you must withhold pursuant to sections 552.117 and 552.130. You must release the rest of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

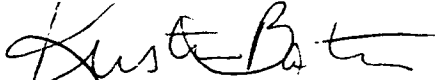
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 155004

Enc. Submitted documents

c: Mr. Larry P. McDougal  
Law Offices of Larry P. McDougal  
1000 Austin Street, Suite A  
Richmond, Texas 77469  
(w/o enclosures)